

Chapter V

Emergency Actions

Article 5-01: Definitions

For purposes of this Chapter:

competent investigating authority means the competent authority of each Party set out in Annex 5-01;

contribute importantly means an important cause, but not necessarily the most important cause;

domestic industry means the producers as a whole of the like or directly competitive product operating in the territory of a Party;

emergency action does not include any emergency action pursuant to a proceeding instituted prior to the entry into force of this Agreement;

good originating in the territory of a Party means an “originating good”, as defined in Chapter III (Rules of Origin);

like good means a good which, although not alike in all respects, has like characteristics and like component materials which enable it to perform the same functions and to be commercially interchangeable with the good to which it is compared;

petition means also complaint;

representative of the domestic industry means the producers accounting for at least 50 percent of the production of the like or directly competitive good operating in the territory of the importing Party;

serious injury and threat of serious injury means “serious injury” and “threat of serious injury”, as defined in the WTO Agreement on Safeguards and shall be determined in accordance with this Agreement; and

transition period means for each good the period of tariff elimination for that good with the addition of two years.

Article 5-02: Bilateral Emergency Actions

1. Subject to paragraphs 2 through 4, and during the transition period only, if a good originating in the territory of a Party, as a result of the reduction or elimination of a customs duty provided for in this Agreement, is being imported into the territory of the other Party in such increased quantities, in absolute and relative terms, and under such conditions that the imports of the good from that Party alone constitute a substantial cause of serious injury to a domestic industry, the Party into whose territory the product is being imported may, to the minimum extent necessary to remedy the injury:

- (a) suspend the further reduction of any rate of a customs duty provided for under this Agreement on the product; or
- (b) increase the rate of a customs duty on the product to a level not exceeding the base rate of customs duty, as referred to in paragraph 1 of Article 2-03.

2. The following conditions and limitations shall apply to a proceeding that may result in emergency action under paragraph 1:

- (a) the Party initiating such a proceeding shall, without delay, deliver to the other Party written notice thereof;
- (b) any such action shall be taken no later than one year after the date of initiation of the proceeding;
- (c) no action may be maintained beyond the expiration of the transition period, except with the consent of the Party against whose good the action is taken;
- (d) no action may be taken by a Party against any particular good originating in the territory of the other Party more than two times or for a cumulative period exceeding two years; and
- (e) upon the termination of the action, the rate of duty shall be the rate which would have been in effect but for the action.

3. A Party may take a bilateral emergency action after the expiration of the transition period to deal with cases of serious injury to a domestic industry arising from the operation of this Agreement only with the consent of the other Party.

Article 5-03: Global Emergency Actions

1. Each Party retains its rights and obligations under Article XIX of GATT 1994, the WTO Agreement on Safeguards or any other safeguard agreement pursuant thereto except those regarding compensation or retaliation and exclusion from an action to the extent that such rights or obligations are inconsistent with this Article. Any Party taking an emergency action under Article XIX or any such agreement shall exclude imports of a product from the other Party from the action unless:

- (a) imports from the other Party account for a substantial share of total imports; and
- (b) imports from the other Party contribute importantly to the serious injury or threat thereof caused by total imports.

2. In determining whether:

- (a) imports from the other Party account for a substantial share of total imports, those imports normally shall not be considered to account for a substantial share of total imports if that Party is not among the top five suppliers and does not supply at least 15 percent of the good subject to the proceeding, measured in terms of import share during the most recent representative period, that shall normally be three-years. During the first three years after the entry into force of this Agreement, the import

share may be calculated for a period shorter than three years to the extent not to include the years before the date of entry into force of this Agreement; and

- (b) imports from the other Party contribute importantly to the serious injury or threat thereof, the competent investigating authority shall consider such factors as the change in the import share of the other Party and the level and change in the level of imports of the other Party. In this regard, imports from the other Party normally shall not be deemed to contribute importantly to serious injury or threat thereof, if the growth rate of imports from that Party during the period in which the injurious increase in imports occurred is appreciably lower than the growth rate of total imports from all sources over the same period.

3. The following conditions and limitations shall apply to a proceeding that may result in emergency action under paragraph 1 or 4:

- (a) the Party initiating such a proceeding shall, without delay, deliver to the other Party written notice thereof;
- (b) where, as a result of an action, the rate of a customs duty is increased, the margin of preference shall be maintained;
- (c) no action may be taken by a Party against any particular good originating in the territory of the other Party more than two times or for a cumulative period exceeding two years; and
- (d) upon the termination of the action, the rate of a customs duty shall be the rate which would have been in effect but for the action.

4. A Party taking such action, from which a good from the other Party is initially excluded pursuant to paragraph 1, shall have the right subsequently to include that good from the other Party in the action in the event that the competent investigating authority determines that an increase in imports of such good from the other Party is contributing importantly to the serious injury or threat thereof and thereby undermines the effectiveness of the action.

Article 5-04: Administration of Emergency Action Proceedings

1. Neither Party may impose restrictions on a product in an action under Articles 5-02 or 5-03:

- (a) without delivery of prior written notice to the other Party, and without adequate opportunity for consultations with the other Party, at least 20 days in advance of taking the action; and
- (b) that would have the effect of reducing imports of such good from the other Party below the trend of imports of the good from that Party over a recent representative base period, which may include dates prior to the increase in imports under Article 5-02 or 5-03, with allowance for reasonable growth.

2. The Party taking an action pursuant to Article 5-02 or 5-03 shall endeavor to provide to the other Party a mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional custom duties

expected to result from the action. If the Parties are unable to agree on compensation, the Party against whose product the action is taken may take tariff action having trade effects substantially equivalent to the action taken. The Party taking the tariff action shall apply such action only while the measure is in force, and shall not exercise this right without delivering adequate opportunity for consultation.

3. Each Party shall entrust determinations of serious injury, or threat thereof, in emergency action proceedings to a competent investigating authority, subject to review by judicial or administrative tribunals. Negative injury determinations shall not be subject to modification, except by such review.

4. An emergency action proceeding may be initiated by a petition by or on behalf of the domestic industry. The petition shall be considered to have been made on behalf of the domestic industry if it is supported by those domestic producers whose collective output constitutes more than 50 percent of the total production of the like good produced by the domestic industry.

5. In special circumstances, a Party may initiate an emergency action proceeding on its own motion.

6. Where the basis for an investigation is a petition filed by an entity representative of a domestic industry, the petition shall include adequate and detailed information concerning the petitioner, as well as all other relevant information to the extent that such information is publicly available from governmental or other sources, or best estimates and their basis if such information is not available, concerning the following:

- (a) the imported good as well as the like or directly competitive domestic good;
- (b) representativeness, according to paragraph 4;
- (c) import data for a sufficient representative period of no less than two years that form the basis of the assertion that the imported good is causing or threatening to cause serious injury;
- (d) data on total domestic production of the like or directly competitive good for the same period;
- (e) quantitative and objective data indicating the nature and extent of injury to the concerned domestic industry, such as data showing changes in the level of sales, prices, production, productivity, capacity utilization, market share, profits and losses, and employment; and
- (f) evidence showing the existence of causal link, in accordance with Article 4.2(b) of the WTO Agreement on Safeguards, between increased imports of the product concerned and the serious injury or threat thereof to the domestic industry.

7. Immediately after initiation, and due regard being paid to the requirement for the protection of confidential information, the investigating authority shall make available for review by interested parties the petition, the assessment of the authority under paragraph 9 and any other data or information that constitutes the basis for initiation.

8. On initiating an emergency action proceeding concerning the other Party, the competent investigating authority shall publish notice and notify the other Party of the initiation of the

proceeding. The notice shall identify the petitioner or other requester, the imported good that is the subject of the proceeding and its tariff subheading, the nature and timing of the proceedings, including dates of deadlines for filing briefs, statements and other documents, time and place of hearing if so decided by the competent authority, the place at which the petition and any other documents filed in the course of the proceeding may be reviewed, and the name, address and telephone number of the office to be contacted for more information.

9. The investigating authority shall not publish the notice required under paragraph 8 without first assessing carefully the existence of the information detailed in paragraph 6 notwithstanding the initiation is due to a petition or self-motion, and shall determine whether such information is sufficient in order to justify initiations of the proceedings.

10. In the course of each proceeding, the competent investigating authority shall:

- (a) allow interested parties to submit evidence and their views, including the opportunity to respond in writing;
- (b) hold a hearing upon request, after providing reasonable notice, to allow all interested parties, and any association whose purpose is to represent the interests of consumers in the territory of the Party initiating the proceeding, to appear in person or by counsel, to present evidence and to be heard on the questions of serious injury, or threat thereof, and the appropriate remedy; and
- (c) provide an opportunity to all interested parties and any such association to respond to presentations made at that hearing.

11. The competent investigating authority shall adopt or maintain procedures for the treatment of confidential information, protected under domestic law, that is provided in the course of a proceeding, including a requirement that interested parties and consumer associations providing such information furnish non-confidential written summaries thereof, or where they indicate that the information cannot be summarized, the reasons why a summary cannot be provided.

12. In conducting its proceeding the competent investigating authority shall gather, to the best of its ability, all relevant information appropriate to the determination it must make. It shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, including the rate and amount of the increase in imports of the good concerned, in absolute and relative terms as appropriate, the share of the domestic market taken by increased imports, and changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

13. The competent investigating authority shall not make an affirmative injury determination unless its investigation demonstrates, on the basis of objective evidence, the existence of a causal link between increased imports of the product concerned and serious injury or threat thereof. Where factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

14. The competent investigating authority, before making a final affirmative determination in an emergency action proceeding, shall allow sufficient time to gather and consider the relevant information, and to conduct its proceeding in accordance with paragraph 10.

15. The competent investigating authority shall publish promptly a report in accordance with Article 4.2(c) of the WTO Agreement on Safeguards that shall set forth the findings and reasoned

conclusions of the investigating authority on all pertinent issues of law and fact.

16. In its report, the competent investigating authority shall not disclose any confidential information provided pursuant to any undertaking concerning confidential information that may have been made in the course of the proceedings.